

## EXPORT ADMINISTRATION AMENDMENTS ACT OF 1983

JULY 26, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MOAKLEY, from the Committee on Rules, submitted the following

### REPORT

[To accompany H.R. 3231]

The Committee on Rules, to whom was referred the bill (H.R. 3231) to amend the authorities contained in the Export Administration Act of 1979, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### JURISDICTION AND SCOPE OF COMMITTEE REPORT

The bill was sequentially referred to the committee for consideration of certain provisions of section 113(c). That section permits the President to seek special legislative authorization for the imposition of foreign policy controls. Provisions of that subsection which the committee views as rules of the House are those which (1) designate the committee of the House which will receive referral of joint resolution introduced pursuant to such a request and (2) provide for the automatic discharge of such resolutions.

The committee has confined its mark-up entirely to those provisions. However, other provisions of the bill touch upon matters of concern to the committee. As a result, its hearings have been slightly broader than the scope of the referral and the committee desires to comment on the full scope of its hearings. The other matters which the committee reviewed are those relating to legislative review provisions contained in the bill, and those carried in underlying law extended by the bill.

The Committee on Foreign Affairs reported the bill on June 22nd, the day before the Supreme Court handed down its landmark decision in *Immigration and Naturalization Service v. Chadha*. In characterizing that ruling, Justice Powell observed that it "apparently will invalidate every use of the legislative veto."

Several provisions of the bill and the statute it amends, the Export Administration Act of 1979, constitute congressional review mechanisms which appear to fall within the reach of the holding in *Chadha*. In fact, the appendix to the dissenting views of Justice White in *Chadha* identifies two provisions of the Export Administration Act of 1979 which are asserted to be overturned by the decision.

The Committee on Rules enjoys joint jurisdiction with the Committee on the Judiciary over legislative veto bills, which contain congressional rules and are applicable to federal agency rulemaking generically. In the case of such bills, applicable to specific agencies or programs, the jurisdiction of the Committee on Rules is shared with the standing committee or committees of the House having responsibility for measures relating to the agency or program in question.

As a result, although there are some limitations on the committee's jurisdiction, it has been the only forum for coordinated review of the hundreds of congressional review laws which have been enacted, and the hundreds more that have been proposed particularly over the past decade. Because of the vast institutional impact of these mechanisms, the committee has taken this responsibility seriously and the only thorough and coordinated examination of the issue has been undertaken by its subcommittees over a period of several years.

The legislative veto, because of this impact on Congress as an institution, continues to be a matter of interest to the committee. Therefore, its subcommittee hearings on the bill offered Members an opportunity to clarify the legislative intent of the provisions and to propose legislative remedies. The chairman of the Subcommittee on International Economic Policy and Trade, Congressman Bonker appeared and submitted proposed amendments to resolve all constitutional issues posed by the court decision in relation to H.R. 3231.

The committee wishes to note, however, that the preponderant jurisdiction over the subject matters of H.R. 3231 is vested in the Committee on Foreign Affairs, under clause 1(i)(14) of rule X. Although the bill has been referred sequentially to four committees, the scope of each referral is limited. Although the committee exercises its own responsibilities, under clause 1(q)(1) of rule X, broadly with respect to the institutional implications of congressional review provisions, in all other particulars of the bill, the committee defers, without recommendation, to the report to accompany the measure of the Committee on Foreign Affairs (H. Rept. 98-257, Pt. 1).

#### COMMITTEE CONSIDERATION

H.R. 3231 was introduced on June 6, 1983 by Mr. Bonker. The introduced bill was based on prior subcommittee and committee consideration, in the Committee on Foreign Affairs, on H.R. 1566, H.R. 2761, and H.R. 2971.

The bill has been co-sponsored by Messrs. Zablocki, Fascell, Hamilton, Solarz, Mica, Barnes, Wolpe, Crockett, Gejdenson, Dymally, Lantos, Kostmayer, Torricelli, Berman, Levine, Feighan, Weiss,

Garcia, Winn, Pritchard, Leach, Bereuter, Zschau, Chandler, Patterson, and McNulty.

The bill was referred to the Committee on Foreign Affairs and reported on June 22nd. On that date, it was sequentially referred for a period ending July 22nd, to the Committee on Armed Services, the Committee on Banking, Finance and Urban Affairs, and the Committee on the Judiciary.

As a result of its examination of the bill, in light of the *Chadha* decision, the Committee on Rules subsequently requested referral. But, to avoid any unnecessary delay in the processing of the bill, indicated it would abide by the reporting deadline previously imposed on the other committees. On July 12th that additional referral was made on those terms.

On July 20th, the bill was considered by the Subcommittee on Rules of the House and reported to the full committee, by voice vote, and without amendment. Testimony was heard from Messrs. Bonker, Solarz, and Young of Alaska. Messrs. Wolpe and Roth submitted letters which were included in the hearing record.

The subcommittee report was considered by the committee on July 21st and the bill was ordered reported by voice vote.

A related bill (S. 979) to amend and reauthorize the Export Administration Act of 1979, was reported by the Senate Committee on Banking, Housing, and Urban Affairs on May 23rd. It is presently on the calendar in the other body and eligible for consideration.

#### PROCEDURES RELATING TO JOINT RESOLUTIONS OF APPROVAL UNDER SECTION 6

Section 113(c) proposes to amend section 6 of the Export Administration Act of 1979 to add a new subsection (n) which provides expedited procedures by which the Congress can act to authorize foreign policy controls, otherwise limited by section 6, as amended by the bill.

The committee has concerns about the nature of the congressional review procedures proposed by section 113(c). The committee is aware that significant efforts have been made by those responsible for the bill to accommodate the reservations of the committee with respect to rules of the House contained in prior versions of the bill (H.R. 1566 and H.R. 2761) and, as an accommodation to the political and legislative complexities attendant to this bill, proposes no amendments.

However, in the wake of the recent Supreme Court decision, *Immigration and Naturalization Service v. Chadha*, which appears to require Congress to review executive delegations and recommendations only by statutory affirmation or nullification, joint resolutions of the type contemplated in this provision will become increasingly attractive to committees of the House seeking alternatives to the traditional legislative veto. The committee, therefore, considers it appropriate to discuss the concerns it has about the form of review contemplated in section 113(c):

#### *Format of joint resolutions*

The proposed subsection (n) establishes procedures for Congress to respond to any Presidential requests for statutory authorization

to impose foreign policy export controls in the form of a joint resolution, the text of which is set forth in paragraph (2) of the proposed subsection (n) and which only approves such recommendations.

The committee has always had reservations about "legislative veto" laws whose rules are designed to limit the scope of the legislative response to issues placed before Congress for review, to the extent that such rules force Congress to act on resolutions which can only affirm or reject executive recommendations. Such propositions have been justified, in the context of customary one or two House vetoes, by the inability of Congress to consider and perfect recommendations except by statute.

However, since the terms of *Chadha* appear to require Congress to carry out review of executive delegations and recommendations only by statutory affirmation or nullification, there is little justification for continuing such limitations on the scope and nature of congressional review.

Although there are precedents that indicate it has not always been so, the President's right to propose legislation is undoubted in the modern practice. And the authority of Congress to respond legislatively to such a communication is equally undoubted. To pass a law authorizing the executive to issue a rule or make any other proposal and to provide that Congress can pass a joint resolution enacting the recommendation, is a self-evident restatement of the Constitution.

The only reason for such a restatement, if a bill follows the traditional form of previous legislative vetoes, would be to include other provisions which impose a form of "closed rule" on congressional action on the recommendation. The House would be unlikely to adopt a closed rule on a bill yet to be written by one of its committees. And it ought to be even more hesitant to write into a law a closed rule to allow entities outside of Congress to propose classes of law over which Congress surrenders its traditional powers to consider and perfect.

Section 113(c) affirms the right of the executive to propose legislation to authorize certain foreign policy controls and the power of Congress to act on such legislation. To the extent that no provision proposed in section 113(c) would limit the right of Congress and its committees to amend any joint resolution, the committee views the proposed subsection (n)(2) as being only a guide to the format in which Congress might respond. In the absence of any limitation on congressional power to otherwise act on such recommendations, the committee does not object to the proposed subsection (n)(2).

#### *Committee designation*

Section 113(c) also provides that joint resolutions under the proposed subsection (n)(1) shall be referred to the Committee on Foreign Affairs in the House and to the Committee on Banking, Housing, and Urban Affairs in the Senate.

The rules of the House require all bills to be delivered to the Speaker, "to be by him referred" and it is mandatory that such referrals be made in accordance with the jurisdiction of the several committees set forth in clause 1 of rule X. In carrying out his re-

sponsibilities for the reference of bills, the Speaker is advised by a non-partisan parliamentarian.

The rules relating to introduction of bills, from the First Congress and through much of the history of the House, obliged a Member to obtain the leave of the House to introduce a bill. The modern practice dates from an evolution which produced the current rule in the revision of the rules in 1890. This evolution involved a very cautious balance of concerns, and is contemporary with the establishment of the modern standing committee structure which balanced the extension of unlimited rights to submit legislation. So long as the House directly determined the reference of bills, under motions, it could adequately protect its interests. But the current right to introduce bills by depositing them at the Clerk's Desk on the floor of the House requires the most scrupulous deference to the Speaker's non-partisan role in examining bills and making reference under the rules.

Beyond the question of designating the committee or committees to which measures will be referred, the committee views with particular concern any rule of the House which proposes to make such designation in statute, even when, as in the present case, the reporting committee acts in a good faith effort simply to restate the rules as they are understood.

The committee's principal concern is a pragmatic one. To the extent that the House chooses to enact any rule into law, it places itself in the constitutionally unacceptable position of requiring the consent of the other body and of the President to directly modify or repeal that rule.

Since the enactment of the Congressional Budget and Impoundment Act of 1974 (Public Law 93-344) statutory adoption of rules has become increasingly common, but traditionally such rules carry a disclaimer relating to the rulemaking power of each House similar to the one contained in that Act (§ 904). The committee has previously reported to the House (H. Rept. 97-809, Part 2) that it views the authority of each House to "determine the rules of its proceedings" to be constitutionally grounded and considers the power of each House to modify rules it has chosen to enact in statutory form to be unaffected by whether that statute carries such a disclaimer. Nevertheless, the language is customary and the committee believes that unnecessary doubts are invited by proposing rules in statutory form, particularly in the absence of such a disclaimer.

The history of jurisdiction over the pending measure provides a fairly clear illustration of the potential inconvenience of statutory rules. Had section 113(c) been enacted nine years ago, it would have provided for reference to the committee which then had jurisdiction for subject matter of the bill (the Committee on Banking and Currency). After 1974, with the transfer of jurisdiction over export controls to the Committee on Foreign Affairs (H. Res. 988, 93rd Congress), the House would have found itself in the untenable position of having joint resolutions under such a law handled by a committee which lacked legislative jurisdiction over the subject matter.

Likewise, even when no change is made in the jurisdiction of committees, it is impossible to foresee every possible use an Admin-

istration may make of such authorities and to assert with certainty that no other committee might qualify for some form of referral. The committee is aware of no case in which a committee other than the Committee on Foreign Affairs would qualify for referral of the type of joint resolution contemplated under the amendments proposed in section 113(c), but perceives no reason to prevent the Speaker from honoring any legitimate assertion of jurisdiction.

### *Automatic discharge*

One of the key components of legislative vetoes has usually been provision for special discharge procedures, more easily attained than those procedures which have been set forth under the standing rule of the House on the subject for more than 50 years. In the context of usual legislative veto, these provisions are argued on the ground that the matter to which the review pertains will become effective by a date certain, in the absence of disapproval by Congress.

In the case of section 113(c), the vehicle proposed is a joint resolution of approval, which does not become effective until enacted. In the absence of the time factors applicable to disapproval resolutions, the need seems limited for the provision which would automatically discharge the Committee on Foreign Affairs, 30 days after it receives a joint resolution under the proposed subsection (n)(1).

The argument for such special rules is that the controls under section 6 of the Export Administration Act of 1979 are significant foreign policy tools, and there should be an assurance of swift congressional action. In this regard, the committee would note that the declarations of war relating to World War II were handled under motions to suspend the rules, and those relating to the Spanish-American War and World War I, by unanimous consent. The rules of the House do not, to this day, accord any special privilege or special discharge procedures to such joint resolutions. It is anomalous that the enactment of 113(c) would create special rules of the House that would give the Committee on Foreign Affairs less discretion over a Presidential recommendation to limit exports to a country than to declare war against it.

This is intended as no criticism of the development of this bill. The Committee on Foreign Affairs is acting in an area in which it is difficult, if not impossible, to write statutory standards that would embrace all the many foreseen and unforeseen applications of export controls. And that committee is attempting to forge a compromise that will provide Congress with some ability to accommodate requests by the President for special authorities.

Most special rules can be easily justified within the context of the individual bills that propose them. The committee is sensitive to the concerns of those who propose rules such as those contained in section 113(c), or even more comprehensive rules.

The committee's reservation, however, concerns the cumulative effect of the large number of such provisions which have been enacted. The committee believes that these kinds of special procedures have proliferated to a point at which the potential exists for these procedures to interfere with each other, and to prevent the

House from reaching matters of greater importance to which no special procedures attach.

However, the special rules imposed by section 113(c) apply only to the committee to which joint resolutions under the section are referred and do not unduly interfere with the House itself. The Committee on Foreign Affairs, in its own committee rules, could establish procedures which could have much the same effect. And, in view of the limited nature of special procedures, the committee does not object to the provision.

#### ALASKA OIL EXPORTS

Section 7(d) of the Export Administration Act of 1979 prohibits the export of Alaskan North Slope Crude Oil, except as may be authorized by concurrent resolution.

The committee would note that this provision is not a legislative veto, as the term is commonly understood. The most common form of the veto, delegates an authority of a legislative character to the executive, which will become effective, at the expiration of a certain period, unless nullified by the action of one or both Houses. This was the nature of all three cases decided by the Supreme Court, in the last term. In *Chadha*, and in the decisions applicable to regulatory authorities of the Federal Energy Regulatory Commission and the Federal Trade Commission, the courts have been able to find the legislative veto severable from the delegated authorities subject to the review; as a practical result, these decisions preserve the executive powers absent the special procedures for nullification.

Section 7(d), however, is a matter of an entirety different character. Paragraph (1) of that subsection is, for all intents and purposes, an absolute ban on exports of Alaskan North Slope crude oil. Paragraph (2) provides that the President may make "findings" with respect to export of such oil and provides that Congress may adopt a concurrent resolution "approving such exports." The use of a concurrent resolution, for a purpose so clearly legislative as authorizing exports otherwise prohibited by law, would appear to fall within the terms of *Chadha*, as noted by Justice White in the appendix to his dissenting opinion.

The committee believes that the enactment of a law which requires an executive finding or recommendation to be affirmatively approved by subsequent congressional action, in order to become effective, resolves the question of severability *prima facie*. No court is required to examine legislative intent further to make a determination with respect to severability, because Congress clearly acted with a legislative determination not to make any delegation.

Section 7(d)(2) allows the President to make certain findings that would justify exports, otherwise prohibited by paragraph (1) of that subsection, and communicate those findings to Congress. And the section provides that exports that are subject to those findings will be permitted, if approved by both Houses of Congress.

The choice of the format of a concurrent resolution for this congressional action clouds the constitutionality of paragraph (2) in the wake of the *Chadha* decision. But, having been drafted prior to that guidance by the Supreme Court, the choice should be regarded

as nothing more than a convenience. Other than to meet the requirements subsequently imposed by *Chadha*, there would be no reason for Congress to submit to the President, for his approval or veto, a resolution that only approves a finding recommended by him.

The committee believes that the legislative history is rather clear, both with respect to the 1979 Act and H.R. 3231, on these points. And the committee is concerned that a court review of section 7(d), in its present form, would lead to a decision as to constitutionality and severability that would leave no flexibility to export oil, even if the strict standards of paragraph (2)(A) were to be met.

During subcommittee hearings, therefore, Congressman Bonker was invited to present recommendations; the gentleman proposed the following perfecting amendment:

AMENDMENT TO H.R. 3231, AS REPORTED BY THE COMMITTEE ON  
FOREIGN AFFAIRS

Page 36, strike out lines 12 and 13 and insert in lieu thereof the following:

SEC. 117. Section 7(d) of the Act (50 U.S.C. App. 2406(d)) is amended—

(1) in paragraph (1) by striking out “unless” and all that follows through “met” and inserting in lieu thereof “subject to paragraph (2) of this subsection”;

(2) in paragraph (2)(A) by striking out “makes and publishes” and inserting in lieu thereof “so recommends to the Congress after making and publishing”;

(3) in paragraph (2)(B)—

(A) by striking out “reports such findings” and inserting in lieu thereof “includes such findings in his recommendation”; and

(B) by striking out “thereafter” and all that follows through the end of the sentence and inserting in lieu thereof “after receiving that recommendation, agrees to a joint resolution approving such exports on the basis of those findings which is thereafter enacted into law.”; and

(4) by adding at the end thereof the following:

The committee believes that the amendment proposed by Congressman Bonker will cure the constitutional doubts which otherwise cloud Congress’ ability to accommodate Presidential requests for authority to export oil under section 7(d)(2) of the Export Administration Act of 1979.

AGRICULTURAL COMMODITIES

Section 7(g) of the Export Administration Act of 1979 provides that, if the President uses authorities under section 6 to curtail exports of agricultural products, the limitation will cease to be effective if disapproved by concurrent resolution within 30 days. Section 119 of the bill amends the provision to provide that such curtailments can be imposed for periods of up to 60 days but can continue



beyond such time only if authorized by the enactment of a joint resolution.

Specifically, section 119 of H.R. 3231 amends section 7(g)(3) of the Export Administration Act of 1979: (1) To extend the period from 30 to 60 days for congressional action on a report by the President imposing, under section 7 (short supply controls) or section 6 (foreign policy controls) of the Act, a prohibition or curtailment on the export of any agricultural commodity; and (2) to provide that such a prohibition or curtailment on the export of any agricultural commodity shall cease to be effective at the end of that 60 day period unless the Congress adopts a joint resolution approving such a prohibition or curtailment on the export of any agricultural commodity. The legislative veto in section 7(g)(3) of the Export Administration Act of 1979 currently permits congressional veto of agricultural exports if a concurrent resolution of disapproval is passed within thirty days after such report is transmitted to Congress. The appendix to Justice White's dissent in *Chadha* specifically lists the veto in section 7(g)(3) as falling within the scope of the Court's ruling that legislative vetoes are unconstitutional. However, the committee is satisfied that H.R. 3231 as reported cures those constitutional objections by changing the concurrent resolution to a joint resolution which requires passage by both Houses and presentation to the President for his signature or veto.

#### U.S. POLICY TOWARD SOUTH AFRICA ACT

Title III of H.R. 3231 establishes the U.S. Policy Toward South Africa Act of 1983. Subtitle I sets forth the principles for endorsement and implementation of fair labor standards for U.S. firms operating in South Africa with more than twenty employees; prescribes penalties for noncompliance; and authorizes the Secretary of State not to implement the provisions of subtitle 1 (labor standards) with respect to a U.S. person if he determines that compliance would harm U.S. national security. This provision requires that a waiver be published in the Federal Register and that basis for the waiver be submitted to Congress. A waiver shall take effect 30 legislative days after being submitted to Congress unless both Houses of Congress adopt a concurrent resolution disapproving the waiver. This is clearly an unconstitutional legislative veto which needs reexamining. The report of the Committee on Foreign Affairs indicates that it is the committee's intent that this waiver authority would only be used in the event of a specific, serious, and material threat to U.S. national security and that the congressional disapproval of the waiver is intended to insure against any possible abuse of the waiver clause.

Subtitle 2 prohibits U.S. bank loans to the South African Government, except for loans made for educational, housing, and health facilities which are available on a totally nondiscriminatory basis in areas open to all population groups; prohibits the importation into the U.S. of Krugerrands or any other gold coin minted or offered for sale by the South African Government; prescribes penalties for noncompliance; and authorizes the Secretary of State to implement these provisions. Section 324 of the bill allows the President to waive for periods of not more than one year the prohibi-

tions relating to loans to South Africa and importation of gold coins if he determines that the Government of South Africa "has made substantial progress toward full participation of all the people of South Africa in the social, political and economic life in that country and toward an end to discrimination based on race or ethnic origin." Section 324 further provides that the President shall submit such determination and the basis therefore to Congress and the waiver shall take effect 30 legislative days after the submission to Congress unless both Houses of Congress, within the 30-day period, adopt a concurrent resolution disapproving the determination.

The U.S. Policy Toward South Africa provisions were originally contained in H.R. 2915, the State Department authorization for fiscal year 1984, but the Committee on Foreign Affairs by unanimous consent agreed to delete that title from the bill. Subsequently, the committee by unanimous consent agreed to the Solarz amendment to incorporate the South Africa policy provisions as Title III of the Export Administration Amendments Act of 1983.

Because of the ruling in *Chadha*, subsequent to the reporting of H.R. 3231, the committee requested that the Committee on Foreign Affairs and Congressman Solarz, the author of that provision, re-examine the congressional review mechanisms proposed in the bill. In response to this invitation, during subcommittee hearings, Congressman Bonker and Congressman Solarz presented recommendations; the gentlemen proposed the following perfecting amendments:

#### AMENDMENTS TO H.R. 3231, AS REPORTED BY THE COMMITTEE ON FOREIGN AFFAIRS

Page 60, line 12, strike out the period and all that follows through line 24 and insert in lieu thereof "if the President publishes each waiver in the Federal Register and submits each waiver and the justification for the waiver to the Congress and if the Congress enacts a joint resolution approving the waiver."

Page 64, line 11, strike out the period and all that follows through line 21 and insert in lieu thereof ", if the President submits any such determination, and the basis for the determination, to the Congress, and if the Congress enacts a joint resolution approving the determination."

Page 64, lines 5 and 6, strike out "periods of not more than one year each" and insert in lieu thereof "a period of not more than one year".

The committee believes that the amendments proposed by Messrs. Bonker and Solarz will cure the constitutional doubts which otherwise cloud Congress' ability to accommodate Presidential requests for authority to waive provisions of title III.

#### MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

##### *Comparative print*

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the

existing rules. Although the bill would make minor changes in the rules of the House, it would do so in a bill and in a manner that does not directly amend the Rules of the House of Representatives.

*Changes in existing law made by the bill*

Clause 3 of rule XIII requires the report of each committee on a bill or joint resolution to contain a comparative print relating to the measure. The report of the Committee on Foreign Affairs to accompany the bill (H. Rept. 98-257, Part 1, p. 36) contains matter in compliance with the "Ramseyer rule," indicating changes in existing law made by the bill, as reported. Under the sequential referral, the committee has recommended no changes in the bill, as reported by the Committee on Foreign Affairs.

*Congressional Budget Office estimates*

Clause 2(1)(3)(C) of rule XI requires each committee report to contain any cost estimate and comparison prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974. No such estimate has been received by the committee. However the committee is aware that such an estimate was prepared for the Committee on Foreign Affairs and appears in the report of that committee to accompany the bill (H. Rept. 98-257, Part 1, p. 35). Under the sequential referral, the committee has recommended no changes in the bill, as reported by the Committee on Foreign Affairs.

Clause 2(1)(3)(B) of rule XI requires each committee report to contain any statement required by section 308(a) of the Congressional Budget Act of 1974. That section does not apply to this bill.

*Committee cost estimate*

Clause 7(a) of rule XI requires certain committee reports to contain committee cost estimates. That provision does not apply to the Committee on Rules but the committee explores the cost implication of all measures it considers. The committee is aware of no costs, with regard to the limited scope of the bill reviewed by it and defers to the judgment of the Committee on Foreign Affairs on the costs associated with the bill (H. Rept. 98-257, Part 1, p. 34).

*Oversight findings*

Clause 2(1)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has made no special oversight findings in connection with the bill and notes that, under the rules of the House, oversight responsibility with regard to export controls is vested in the Committee on Foreign Affairs. The committee defers, on this matter, to the report to accompany the measure made by the Committee on Foreign Affairs (H. Rept. 98-257, Part 1, p. 34).

*Oversight findings and recommendations of the Committee on Government Operations*

Clause (2)(1)(3)(D) of rule XI requires each committee report to contain any oversight findings and recommendation made by the

Committee on Government Operations pursuant to clause 4(c)(2) of rule X. No such findings and recommendations have been received.

*Inflation impact statement*

Clause 2(l)(4) of rule XI requires each committee report to contain a statement relating to the inflationary impact of the enactment of that measure. The committee is aware of none and defers, on this matter, to the report to accompany the measure of the Committee on Foreign Affairs (H. Rept. 98-257, Part 1, p. 34).

*Views of committee members*

Clause 2(l)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity. No such views were submitted for inclusion in the report.

## APPENDIX

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Although the committee has reported no amendments to the bill, it has reviewed the amendments, discussed in the report, proposed by Congressman Bonkers and Solarz to cure all constitutional doubts regarding H.R. 3231 and the Export Administration Act of 1979. For the information of the House, the committee provides the text of the bill, as proposed to be amended. The text also reflects certain technical corrections noted to be necessary by the Committee on Foreign Affairs subsequent to the reporting of the bill:

### AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231, AS REPORTED

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SHORT TITLE

SECTION 1. Titles I and II of this Act may be cited as the "Export Administration Amendments Act of 1983".

#### TITLE I—AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979

##### REFERENCE TO THE ACT

SEC. 101. For purposes of this title, the Export Administration Act of 1979 shall be referred to as "the Act".

##### VIOLATIONS

SEC. 102. (a) Section 11(b) of the Act (50 U.S.C. App. 2410(b)) is amended by inserting after paragraph (2) the following new paragraphs:

"(3) Any person who conspires or attempts to export anything contrary to any provision of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of a violation of an export control imposed under section 5 of this Act, such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

"(4) Any person who possesses any goods or technology—

"(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control; or

"(B) knowing or having reason to believe that the goods or technology would be so exported;

shall, in the case of a violation of an export control imposed under section 5, be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6, be subject to the penalties set forth in subsection (a).

"(5) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of a foreign policy or national security control, such person shall be subject to the penalties set forth in paragraph (1) of this subsection."

(b) Section 11(c) of the Act is amended by adding at the end thereof the following new paragraph:

"(3) An exception to any order issued under this Act which revokes the authority of a United States person to export goods or technology may not be made unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception."

(c) Section 11(e) of the Act is amended by inserting "or any property interest or proceeds forfeited pursuant to subsection (f)" after "subsection (c)".

(d) Section 11 of the Act is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection:

"(f) **FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.**—Any person who is convicted of a violation of an export control imposed under section 5 of this Act shall, in addition to any other penalty, forfeit to the United States (A) any property interest that person has in the goods or technology that were the subject of the violation or that were used to facilitate the commission of the violation, and (B) any proceeds derived directly or indirectly by that person from the transaction from which the violation arose."

(e) Section 11(h) of the Act, as redesignated by subsection (d) of this section, is amended by striking out "or (f)" and inserting in lieu thereof "(f), or (g)".

#### ENFORCEMENT AUTHORITY

SEC. 103. Section 12(a) of the Act (50 U.S.C. App. 2411(a)) is amended—

(1) by inserting "(1)" immediately before the first sentence; and

(2) by adding at the end thereof the following new paragraphs:

"(2) The Secretary may designate any officer or employee of the Department of Commerce to do the following in carrying out enforcement authorities under this Act:

"(A) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

"(B) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

"(C) Search without warrant or process any person, place, or vehicle on which, and any baggage in which, the officer or employee has probable cause to believe there are goods or technology being exported or about to be exported in violation of this Act.

"(D) Seize without warrant or process any goods or technology which the officer or employee has probable cause to believe have been, are being, or are about to be exported in violation of this Act.

"(E) Carry firearms in carrying out any activity described in subparagraphs (A) through (D).

"(3)(A) Notwithstanding any other provision of law, the authority of customs officers with respect to violations of this Act shall be limited to (i) inspection of or other search for and detention and seizure of goods or technology at those places in which such officers are authorized by law to conduct such searches, detentions, and seizures, and (ii) any investigation conducted prior to such inspection, search, detention, or seizure. Upon seizure by any customs officer of any goods or technology in the enforcement of this Act, the matter shall be referred to the Department of Commerce for further investigation and other appropriate action under this Act.

"(B) In conducting inspections of goods and technology in the enforcement of this Act, the United States Customs Service shall limit those inspections to goods and technology with respect to which the Customs Service has received specific information of possible violations of this Act, and shall not conduct random inspections which would result in the detention of shipments of goods or technology that are in full compliance with this Act.

"(C) Notwithstanding any other provision of law, not more than \$14,000,000 may be expended by the United States Customs Service in any fiscal year in the enforcement of export controls.

"(4) All provisions of law relating to the seizure, forfeiture, and condemnation of articles for violations of the customs laws, the disposition of such articles or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection or section 11(f) of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this

subsection or section 11(f) of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this subsection and section 11(f) of this Act, be exercised or performed by the Secretary or by such persons as the Secretary may designate.”.

#### FINDINGS; DECLARATION OF POLICY

SEC. 104. (a)(1) Section 2 of the Act (50 U.S.C. App. 2401) is amended in paragraph (3) by striking out “which would strengthen the Nation’s economy” and inserting in lieu thereof “consistent with the economic, security, and foreign policy objectives of the United States”.

(2) Section 2 of the Act is further amended by adding at the end thereof the following:

“(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment that are banned or severely restricted for use in the United States, which exports could affect the international reputation of the United States as a responsible trading partner.”.

(b) Section 3 of the Act (50 U.S.C. App. 2402) is amended by adding at the end thereof the following:

“(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so requires protecting the ability of scientists and other scholars freely to communicate their research findings by means of publication, teaching, conferences, and other forms of scholarly exchange.

“(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as the credibility of the United States as a responsible trading partner.”.

#### TYPES OF LICENSES

SEC. 105. Section 4(a)(2) of the Act (50 U.S.C. App. 2403(a)(2)) is amended to read as follows:

“(2) Licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of a validated license for each such export, including but not limited to the following:

“(A) A qualified general license, authorizing exports of goods for approved end uses.

“(B) A distribution license, authorizing exports of goods to approved distributors or users of the goods.

“(C) A project license, authorizing exports of goods or technology for a specified activity.

“(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

“(E) A comprehensive operations license, authorizing exports of goods or technology between and among a domestic concern and foreign subsidiaries, affiliates, vendors, joint ventures, and licensees of that concern which are approved by the Secretary.”.

#### NATIONAL SECURITY CONTROLS

SEC. 106. (a) Section 5(a)(1) of the Act (50 U.S.C. App. 2404(a)(1)) is amended by inserting after the first sentence the following new sentence: “The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of countries to which exports of such goods or technology are controlled under this section.”.

(b) Section 5(b) of the Act is amended by adding at the end thereof the following new sentence: “No authority or permission to export may be required under this section before goods or technology are exported in the case of exports to a country which maintains export controls on such goods or technology cooperatively with the United States, except that the Secretary may require an export license for the export of such goods or technology to such end users as the Secretary may specify by regulation. The Secretary may also by regulation require any person exporting any such goods or technology otherwise subject to export controls under this section to notify the Department of Commerce of those exports.”.

(c) Section 5(e) of the Act is amended by adding at the end thereof the following:  
 "(5) The export of technology and related goods subject to export controls under this section, including items on the list of militarily critical technologies developed pursuant to subsection (d) of this section, shall be eligible for a comprehensive operations license which would authorize, over a period of years and to countries other than those described in section 620(f) of the Foreign Assistance Act of 1961, multiple exports and reexports between and among a domestic concern and foreign subsidiaries, affiliates, vendors, joint venturers, and licensees of that concern which are approved by the Secretary.

"(6) The export to countries other than those described in section 620(f) of the Foreign Assistance Act of 1961 of goods and technology subject to export controls under this section shall be eligible for a distribution license or other licenses authorizing multiple exports. The Secretary shall periodically monitor exports made pursuant to such licenses in order to insure compliance with the provisions of this Act."

(d) Section 5(g) of the Act is amended—

(1) in the second sentence by striking out "by the latest such increase" and inserting in lieu thereof "by the regulations"; and

(2) by inserting after the first sentence the following: "The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of countries to which exports are controlled for national security purposes."

(e) Section 5(k) of the Act is amended—

(1) by inserting ", including those countries not participating in the group known as the Coordinating Committee," after "other countries"; and

(2) by striking out "section 3(9)" and inserting in lieu thereof "paragraphs (9) and (10) of section 3".

(f) Section 5 of the Act is amended by adding at the end thereof the following new subsections:

"(m) REMOVAL OF CERTAIN CONTROLS.—(1) In any case in which, during any 1-year period in which export license applications have been filed for the export of a good subject to an export control under this section, all such license applications have been approved to a country group, the Secretary shall, at the end of that 1-year period, remove the export control on exports of that good to that country group, except that the Secretary may require an export license for the export of that good to such end users in that country group as the Secretary may specify by regulation.

"(2) This subsection shall not apply to export controls which the United States maintains cooperatively with any other country

"(n) GOODS CONTAINING MICROPROCESSORS.—Export controls may not be imposed under this section on a good solely on the basis that the good contains an embedded microprocessor, if such microprocessor cannot be used or altered to perform functions other than those it performs in the good in which it is embedded. An export control may be imposed under this section on a good containing such a microprocessor only on the basis that the functions of the good itself are such that the good, if exported, would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States."

#### COORDINATING COMMITTEE

SEC. 107. Section 5(i) of the Act (50 U.S.C. App. 2404(i)) is amended by adding at the end thereof the following:

"(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for the Committee, and improve the structure and function of the Secretariat of the Committee by upgrading professional staff, translation services, data base maintenance, communications, and facilities.

"(6) Agreement to strengthen the Committee so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the benefit of all participants."

#### FOREIGN AVAILABILITY

SEC. 108. (a) Section 5(f)(4) of the Act (50 U.S.C. App. 2404(f)(4)) is amended by striking out the first sentence and inserting in lieu thereof the following: "In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United



States, the President shall take the necessary steps to conduct negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. If, within 6 months after the President's determination, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved."

(b) Section 5(f)(3) of the Act is amended to read as follows:

"(3) With respect to export controls imposed under this section, in making any determination of foreign availability, the Secretary shall accept the representations of applicants unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, and intelligence information."

(c)(1) Section 5(f)(5) of the Act is amended to read as follows:

"(5) The Secretary shall establish in the Department of Commerce an Office of Foreign Availability which shall be under the direction of the Assistant Secretary of Commerce for Trade Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office during that 6-month period. Such information shall include a description of every determination made under this Act during that 6-month period that foreign availability did not exist, together with an explanation of that determination."

(2) Section 5(f)(6) of the Act is amended by striking out "Office of Export Administration" and inserting in lieu thereof "Office of Foreign Availability".

(d) Section 5(f) of the Act is amended by adding at the end thereof the following new paragraph:

"(7) The Secretary shall issue regulations with respect to determinations of foreign availability under this Act not later than 6 months after the date of the enactment of the Export Administration Amendments Act of 1983."

(e) Section 5(h)(6) of the Act is amended by striking out "and provides adequate documentation" and all that follows through the end of the paragraph and inserting in lieu thereof the following: "the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that (A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability, (B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or (C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist. To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall take the necessary steps to conduct such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved."

#### MILITARILY CRITICAL TECHNOLOGIES

SEC. 109. Section 5(d) of the Act (50 U.S.C. App. 2404(d)) is amended by striking out paragraphs (4) through (6) and inserting in lieu thereof the following:

"(4)(A) The Secretary and the Secretary of Defense shall complete the integration of the list of militarily critical technologies into the commodity control list not later than April 1, 1985. The integration of the list of militarily critical technologies into the commodity control list shall be completed with all deliberate speed, and the Secretary and the Secretary of Defense shall report to the appropriate committees of the Congress, before April 1, 1985, any circumstances which would preclude the completion of the integrated list by that date. Such integrated list shall include only a good or technology with respect to which the Secretary finds that countries to which exports are controlled under this section do not possess that good or technology, or a similar good or technology, and the good or technology or similar good or

technology is not available in fact to such a country from sources outside the United States in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, except in the case of a determination of the President with respect to goods or technology under subsection (f)(1) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than April 1, 1985, on actions taken to carry out this subparagraph. In any case in which it is determined that a good or technology should be included on the commodity control list completed pursuant to this subparagraph notwithstanding foreign availability, the report to Congress shall specify why inclusion of that good or technology would significantly benefit United States military or national security.

"(B) The General Accounting Office shall evaluate the efforts of the Secretary and the Secretary of Defense to integrate the list of militarily critical technologies into the commodity control list, and the feasibility of such integration. In conducting such evaluation, the General Accounting Office shall determine whether foreign availability was used as a criterion in developing the commodity control list pursuant to subparagraph (A) and whether the completed list reflected the intent of the Congress in enacting this subsection. In conducting such evaluation, the General Accounting Office shall have access to all information relating to the list of militarily critical technologies, and representatives of the General Accounting Office designated by the Comptroller General may attend any meetings held in the executive branch with respect to such list. The appropriate officers or employees shall notify the General Accounting Office of when and where any such meeting will be held. Not later than April 1, 1985, the General Accounting Office shall submit a detailed report to the Congress on the results of the evaluation conducted pursuant to this subparagraph.

"(C) The Secretary and the Secretary of Defense, in completing the commodity control list pursuant to subparagraph (A), and the General Accounting Office, in conducting the evaluation pursuant to subparagraph (B), shall consider mechanisms to reduce significantly the list of militarily critical technologies, including evaluating for possible removal from the list those goods or technology which are in one or more of the following categories:

"(i) Goods and technology the transfer of which would not lead to a significant near-term improvement in the defense capability of a country to which exports are controlled under this section.

"(ii) A technology that is evolving slowly.

"(iii) Technology that is not process-oriented.

"(iv) Components used in militarily sensitive devices that in themselves are not sensitive.

"(D) The reports submitted pursuant to subparagraphs (A) and (B) shall each include the results of the evaluation of the goods and technology set forth in subparagraph (C) and an evaluation of the feasibility of effectively imposing export controls on technologies as opposed to goods which are the products of those technologies."

#### CRITERIA FOR FOREIGN POLICY CONTROLS; CONSULTATION WITH OTHER COUNTRIES; REPORT TO CONGRESS

SEC. 110. (a) Section 6(b) of the Act (50 U.S.C. App. 2405(b)) is amended to read as follows:

"(b) CRITERIA.—When imposing, expanding, or extending export controls on goods or technology under this section, the President shall consider whether—

"(1) the intended foreign policy purposes of the proposed controls can be achieved through negotiations or other alternative means;

"(2) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

"(3) the proposed controls will have an adverse effect on the economic or political relations of the United States with other friendly countries;

"(4) the proposed controls will have a substantial adverse effect on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a reliable supplier of goods and technology, or on the economic well-being of individual United States industries, companies, and their employees and communities;

"(5) the United States has the ability to enforce the proposed controls effectively;

"(6) the proposed controls are likely to achieve the intended foreign policy purpose; and

"(7)(A) the good or technology, or a similar good or technology, is available in sufficient quantity from sources outside the United States to the country to which exports are to be subject to the proposed controls, or (B) negotiations have been successfully concluded with the appropriate foreign governments to ensure the cooperation of such governments in controlling the export of such good or technology to the country to which exports are to be subject to the proposed controls, except that the preceding provisions of this paragraph shall not apply if the President determines that the proposed controls are necessary to further efforts by the United States to counter international terrorism or to promote observance of internationally recognized human rights."

(b) Section 6 of the Act is amended—

(1) by redesignating subsections (d) through (k) as subsections (e) through (l), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d) **CONSULTATION WITH OTHER COUNTRIES.**—Before export controls are imposed under this section, the President should consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b) and such other matters as the President considers appropriate."

(c) Section 6(f) of the Act, as redesignated by subsection (b)(1) of this section, is amended to read as follows:

"(f) **CONSULTATION WITH THE CONGRESS.**—(1) The President may impose, expand, or extend export controls under this section only after consultation with the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) Following consultation with the Congress in accordance with paragraph (1) and before imposing, expanding, or extending export controls under this section, the President shall submit to the Congress a report—

"(A) indicating how the proposed export controls will further, significantly, the foreign policy of the United States or will further its declared international obligations;

"(B) specifying the conclusions of the President with respect to each of the criteria set forth in subsection (b), and any possible adverse foreign policy consequences;

"(C) describing the nature, the subjects, and the results of the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

"(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

"(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology

The concerns expressed by Members of Congress during the consultations required by this subsection shall be specifically addressed in each report submitted pursuant to this paragraph.

"(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.

"(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3) of this Act."

(d) Section 6(i) of the Act, as redesignated by subsection (b)(1) of this section, is amended by striking out "(f), and (g)" and inserting in lieu thereof "(e), (g), and (h)".

#### EFFECT OF CONTROLS ON EXISTING CONTRACTS AND LICENSES

SEC. 111. (a) Section 6 of the Act (50 U.S.C App 2405), as amended by section 110 of this Act, is further amended by adding at the end thereof the following new subsection:

"(m) **EFFECT OF CONTROLS ON EXISTING CONTRACTS AND LICENSES.**—Any export controls imposed under this section shall not affect any contract to export entered into before the date on which such controls are imposed or any export license issued

under this Act before such date. The preceding sentence shall not apply in a case in which the export controls imposed relate directly, immediately, and significantly to actual or imminent acts of aggression or of international terrorism, to actual or imminent gross violations of internationally recognized human rights, or to actual or imminent nuclear weapons tests, in which case the President shall promptly notify the Congress of the circumstances to which the export controls relate and of the contracts or licenses affected by the controls. Any export controls described in the preceding sentence shall affect existing contracts and licenses only so long as the acts of aggression or terrorism, violations of human rights, or nuclear weapons tests continue or remain imminent. For purposes of this subsection, the term 'contract to export' includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology."

(b) Section 7 of the Act (50 App. 2406) is amended by adding at the end thereof the following new subsection:

"(k) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—Any export controls imposed under this section shall not affect any contract to export entered into before the date on which such controls are imposed, including any contract to harvest unprocessed western red cedar (as defined in subsection (i)(4) of this section) from State lands, the performance of which contract would make the red cedar available for export. For purposes of this subsection, the term 'contract to export' includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology."

(c) The amendment made by subsection (a) shall not apply to export controls imposed before the date of the enactment of this Act. The amendment made by subsection (b) shall apply to export controls in effect on the date of the enactment of this Act and export controls imposed after such date.

#### EXEMPTION FROM FOREIGN POLICY CONTROLS

SEC. 112. Section 6(g) of the Act (50 U.S.C. App. 2405(g)), as redesignated by section 110(b)(1) of this Act, is amended—

(1) by inserting after the first sentence the following: "This section also does not authorize export controls on donations of goods, such as food and clothing, intended to be used to relieve human suffering."; and

(2) by adding at the end thereof the following:

"The President may impose export controls under this section on medicine, medical supplies, food, and donations of goods without regard to the other provisions of this subsection in order to carry out the policy set forth in paragraph (13) of section 3 of this Act."

#### FOREIGN POLICY CONTROLS AUTHORITY

SEC. 113. (a) The first sentence of section 6(a)(1) of the Act (50 U.S.C. App. 2405(a)(1)) is amended to read as follows: "In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation from the United States of any goods, technology, or other information produced in the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations."

(b) Section 6(a) of the Act is further amended by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity."

(c) Section 6 of the Act, as amended by sections 110 and 111 of this Act, is further amended by adding at the end thereof the following new subsection:

"(n) EXPANDED AUTHORITY TO IMPOSE CONTROLS—(1) In any case in which the President determines that it is necessary to impose controls under this section—

"(A) with respect to goods, technology, other information, or persons other than that authorized by subsection (a)(1) of this section; or

"(B) without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section,

the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days of continu-

ous session after the Congress receives the determination and report of the President, that joint resolution shall immediately be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days of continuous session after its referral, such committee shall be deemed to be discharged from further consideration of the resolution.

"(2) For purposes of this subsection, the term 'joint resolution' means a joint resolution the matter after the resolving clause of which is as follows: 'That the Congress, having received on \_\_\_\_\_ a determination of the President under section 6(n)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.', with the date of the receipt of the determination and report inserted in the blank.

"(3) For purposes of this subsection—

"(A) continuity of session is broken only by an adjournment of the Congress sine die, and

"(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session."

(d) The amendments made by subsections (a), (b), and (c) of this section shall not apply to export controls imposed under section 6 of the Act before the date of the enactment of this Act which are extended in accordance with such section 6 on or after such date of enactment.

#### CRIME CONTROL INSTRUMENTS

SEC. 114. (a) Section 6(k)(1) of the Act (50 U.S.C. App. 2405(k)(1)), as redesignated by section 110(b)(1) of this Act, is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this Act, any determination of the Secretary—

"(A) of what goods or technology shall be included on the list established pursuant to subsection (l) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, or

"(B) to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act, except that if the Secretary does not agree with the Secretary of State with respect to any such determination, the matter shall be referred to the President for resolution."

(b) The amendment made by subsection (a) shall apply to determinations of the Secretary of Commerce which are made on or after the date of the enactment of this Act.

#### REIMPOSITION OF EXPORT CONTROLS

SEC. 115. (a) Section 6 of this Act, as amended by sections 110, 111, and 113 of this Act, is further amended by adding at the end thereof the following new subsection:

"(o) EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983 (except those controls with respect to the 1980 summer Olympic games), shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section."

(b) Section 6(j) of this Act, as redesignated by section 110(b)(1) of this Act, is amended by adding at the end thereof the following new sentence. "Any such determination which has been made with respect to a country may not be rescinded unless the President first submits to the Congress a report justifying the rescission and certifying that the country concerned has not provided support for international terrorism, including support for groups engaged in such terrorism, for the preceding 12-month period."

(c) The amendment made by subsection (b) shall apply with respect to any export control made effective by the amendment made by subsection (a).

## PETITIONS FOR SHORT SUPPLY CONTROLS

SEC. 116. (a) Section 7(c)(1)(A) of the Act (50 U.S.C. App. 2406(c)(1)(A)) is amended to read as follows:

"(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled (i) with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, is or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry, and (ii) with respect to which a significant increase in exports is or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry, may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act."

(b) Section 7(c)(1)(B) of the Act is amended—

(1) in clause (i) by striking out "and" after "supply,"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof ", and (iii) that the criteria set forth in paragraph (3)(A) of this subsection are satisfied."

(c) Section 7(c)(1) of the Act is further amended by adding at the end thereof the following:

"(C)(i) For purposes of this subsection, the term 'substantial cause' means a cause which is important and not less than any other cause.

"(ii) Before March 1, 1984, the Secretary shall issue regulations, in accordance with section 553 of title 5, United States Code, which define the operative terms contained in section 3(2)(C) of this Act and in this subsection, including but not limited to the following: 'excessive drain', 'scarce materials', 'serious inflationary impact of foreign demand', 'domestic shortage', 'increase in domestic prices' and 'increase in the domestic price', 'representative of an industry or a substantial segment of an industry', 'domestic industry', 'specific period of time', 'national economy or any sector thereof', 'significant increase in exports', and 'adverse effect'."

(d) Section 7(c)(3) of the Act is amended to read as follows:

"(3)(A) Within 45 days after the end of the 30-day or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material which is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

"(i) there has been a significant increase, in relation to a specific period of time, in exports of such material;

"(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material and exports are a substantial cause of such domestic price increase or domestic shortage;

"(iii) exports of such material are or may be a substantial cause of adverse effect on the national economy or any sector thereof or on a domestic industry; and

"(iv) monitoring or controls or both are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

"(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination."

(e) Section 7(c)(6) of the Act is amended to read as follows:

"(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary shall not consider any other petition with respect to the same material or group of materials which is filed within 6 months after final action on the prior petition has been completed."

(f) Section 7(c) of the Act is further amended—

(1) by striking out paragraph (8) and redesignating paragraphs (9) and (10) as paragraphs (8) and (9), respectively;

(2) by amending paragraph (8), as redesignated by paragraph (1) of this subsection, to read as follows:

"(8) The authority under this subsection shall not be construed to affect the authority of the Secretary under any provision of this Act other than this section."; and

(3) by adding at the end thereof the following:

"(10) Notwithstanding subsection (a) or (b) of this section, no action in response to an informal or formal request by any entity described in paragraph (1)(A) of this subsection to impose controls on or monitor the export of metallic materials capable of being recycled shall be taken under this section except pursuant to this subsection. The Secretary, in any other case, may not impose controls on or monitor the export of metallic materials capable of being recycled unless the Secretary makes the determination required by paragraph (3)(A) of this subsection with respect to such controls or monitoring and complies with paragraph (3)(B) with respect to that determination."

(g) Section 13(a) of the Act is amended by striking out "section 11(c)(2)" and inserting in lieu thereof "sections 7(c)(1)(C)(ii) and 11(c)(2)".

#### DOMESTICALLY PRODUCED CRUDE OIL

SEC. 117. Section 7(d) of the Act (50 U.S.C. App. 2406(d)) is amended—

(1) in paragraph (1) by striking out "unless" and all that follows through "met" and inserting in lieu thereof "subject to paragraph (2) of this subsection";

(2) in paragraph (2)(A) by striking out "makes and publishes" and inserting in lieu thereof "so recommends to the Congress after making and publishing";

(3) in paragraph (2)(B)—

(A) by striking out "reports such findings" and inserting in lieu thereof "includes such findings in his recommendation"; and

(B) by striking out "thereafter" and all that follows through the end of the sentence and inserting in lieu thereof "after receiving that recommendation, agrees to a joint resolution approving such exports on the basis of those findings which is thereafter enacted into law"; and

(4) by adding at the end thereof the following:

"(4) Notwithstanding the provisions of section 20 of this Act, the provisions of this subsection shall expire on September 30, 1987."

#### REFINED PETROLEUM PRODUCTS

SEC. 118. Section 7(e)(1) of the Act (50 U.S.C. App. 2406(e)(1)) is amended in the first sentence by striking out "No" and inserting in lieu thereof "In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no".

#### AGRICULTURAL EXPORTS

SEC. 119. (a) Section 7(g)(3) of the Act (50 U.S.C. App. 2406(g)(3)) is amended by amending the second sentence to read as follows: "If the Congress, within 60 days after the date of its receipt of such report, does not adopt a joint resolution approving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective at the end of that 60-day period."

(b) The third sentence of section 7(g)(3) of the Act is amended by striking out "30-day" and inserting in lieu thereof "60-day"

#### LICENSING PROCEDURES

SEC. 120. (a) Section 10(c) of the Act (50 U.S.C. App. 2409(c)) is amended by striking out "90" and inserting in lieu thereof "60".

(b) Section 10(f)(2) of the Act is amended—

(1) by inserting "in writing" after "inform the applicant"; and

(2) by striking out ", and shall accord" and all that follows through the end of the paragraph and inserting in lieu thereof a period and the following: "Before a final determination with respect to the application is made, the applicant shall be entitled—

"(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

"(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations."

(c) Section 10(f)(3) of the Act is amended—

(1) in the first sentence—

(A) by inserting "the proposed" before "denial" the first two places it appears; and

(B) by striking out "denial" the third place it appears and inserting in lieu thereof "determination to deny the application"; and

(2) by inserting after the first sentence the following new sentence: "The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied."

(d) Section 10 of the Act is amended—

(1) in the section heading by adding "; other inquiries" after "applications"; and

(2) by adding at the end thereof the following new subsections:

"(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

"(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the commodity control list, the Secretary shall, within 10 days after receipt of the request, inform the person making the request of the proper classification.

"(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request."

#### ANNUAL REPORT

SEC. 121. Section 14 of the Act (50 U.S.C. App. 2413) is amended—

(1) by redesignating paragraphs (11) through (20) as paragraphs (12) through (21), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

"(11) the removal of export controls on goods pursuant to section 5(m);"

#### TECHNICAL AMENDMENTS

SEC. 122. (a) Section 7(i)(1) of the Act (50 U.S.C. App. 2406(i)(1)) is amended in the last sentence by inserting "harvested from State or Federal lands" after "red cedar logs".

(b) Section 17(a) of the Act (50 U.S.C. App. 2416(a)) is amended by striking out "Nothing" and inserting in lieu thereof "Except as otherwise provided in this Act, nothing".

(c) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "(f)" and inserting in lieu thereof "(g)".

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 123. (a) Section 18 of the Act (50 U.S.C. App. 2417) is amended to read as follows:

##### "AUTHORIZATION OF APPROPRIATIONS

"SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

"(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1983; or

"(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

"(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

"(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1983 which specifically repeals, modifies, or supersedes the provisions of this subsection.



"(b) **AUTHORIZATION.**—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

"(1) \$24,600,000 for each of the fiscal years 1984 and 1985, of which for each such fiscal year \$15,000,000 shall be available only for enforcement, \$2,100,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5 of this Act, and \$7,500,000 shall be available for all other activities under this Act; and

"(2) such additional amounts for each such fiscal year as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs."

(b) The amendment made by subsection (a) shall take effect on October 1, 1983.

#### TERMINATION OF AUTHORITY

SEC. 124. Section 20 of the Act (50 U.S.C. App. 2419) is amended to read as follows:

##### "TERMINATION DATE

"SEC. 20. The authority granted by this Act terminates on September 30, 1985."

#### HOURS OF OFFICE OF EXPORT ADMINISTRATION

SEC. 125. The Secretary shall modify the office hours of the Office of Export Administration of the Department of Commerce on at least four days of each work-week so as to accommodate communications to the Office by exporters throughout the continental United States during the normal business hours of those exporters.

### TITLE II—EXPORT PROMOTION PROGRAMS

#### REQUIREMENT OF PRIOR AUTHORIZATION

SEC. 201. (a) Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of this Act; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) The provisions of this section shall not be superseded except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) For purposes of this title, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries; and

(4) the operations of the United States Commercial Service and the Foreign Commercial Service, or any successor agency.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 202. There is authorized to be appropriated for each of the fiscal years 1984 and 1985 to the Department of Commerce to carry out export promotion programs \$100,458,000.

## BARTER ARRANGEMENTS

SEC. 203. (a) The President shall, not later than 180 days after the date of the enactment of this Act, submit to the Congress a contingency plan for the promotion of exports of agricultural commodities through the bartering of surplus agricultural commodities produced in the United States for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, and make recommendations as to the feasibility of implementing such bartering.

(b) Notwithstanding any other provision of law, the President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) The President shall take steps to insure that any barters described in subsections (a) and (b)(1) and any purchases authorized by subsection (b)(2) safeguard existing export markets for agricultural commodities operating on conventional business terms from displacement by barters described in subsections (a), (b)(1), and (b)(2).

## TITLE III—SOUTH AFRICA

## SHORT TITLE

SEC. 301. This title may be cited as the “United States Policy Toward South Africa Act of 1983”.

## Subtitle 1—Labor Standards

## ENDORSEMENT AND IMPLEMENTATION OF FAIR EMPLOYMENT PRINCIPLES

SEC. 311. Any United States person who—

(1) has a branch or office in South Africa, or

(2) controls a corporation, partnership, or other enterprise in South Africa, in which more than 20 people are employed shall take the necessary steps to insure that, in operating such branch, office, corporation, partnership, or enterprise, those principles relating to employment practices set forth in section 312 of this Act are implemented.

## STATEMENT OF PRINCIPLES

SEC. 312. (a) The principles referred to in section 311 of this Act are as follows:

(1) Desegregating the races in each employment facility, including—

(A) removing all race designation signs;

(B) desegregating all eating, rest, and work facilities; and

(C) terminating all regulations which are based on racial discrimination.

(2) Providing equal employment for all employees, including—

(A) assuring that any health, accident, or death benefit plans that are established are nondiscriminatory and open to all employees, whether they are paid a salary or are compensated on an hourly basis; and

(B) implementing equal and nondiscriminatory terms and conditions of employment for all employees, and abolishing job reservations, job fragmentation, apprenticeship restrictions for blacks and other nonwhites, and differential employment criteria, which discriminate on the basis of race or ethnic origin.

(3) Establishing equal pay for all employees doing equal or comparable work, including—

(A) establishing and implementing, as soon as possible, a wage and salary structure which is applied equally to all employees, regardless of race, who are engaged in equal or comparable work;

(B) reviewing the distinction between hourly and salaried job classifications, and establishing and implementing an equitable and unified system of job classifications which takes into account such review; and

(C) eliminating inequities in seniority and in-grade benefits so that all employees, regardless of race, who perform similar jobs are eligible for the same seniority and in-grade benefits.

(4) Establishing a minimum wage and salary structure based on a cost-of-living index which takes into account the needs of employees and their families.

(5) Increasing, by appropriate means, the number of blacks and other nonwhites in managerial, supervisory, administrative, clerical, and technical jobs for the purpose of significantly increasing the representation of blacks and other nonwhites in such jobs, including—

(A) developing training programs that will prepare substantial numbers of blacks and other nonwhites for such jobs as soon as possible, including—

(i) expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of employees, and

(ii) creating on-the-job training programs and facilities to assist employees to advance to higher paying jobs requiring greater skills;

(B) establishing procedures to assess, identify, and actively recruit employees with potential for further advancement;

(C) identifying blacks and other nonwhites with high management potential and enrolling them in accelerated management programs;

(D) establishing and expanding programs to enable employees to further their education and skills at recognized education facilities; and

(E) establishing timetables to carry out this paragraph.

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health, including—

(A) providing assistance to black and other nonwhite employees for housing, health care, transportation, and recreation either through the provision of facilities or services or providing financial assistance to employees for such purposes, including the expansion or creation of in-house medical facilities or other medical programs to improve medical care for black and other nonwhite employees and their dependents; and

(B) participating in the development of programs that address the education needs of employees, their dependents, and the local community

(7) Recognizing labor unions and implementing fair labor practices, including—

(A) recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity;

(B) refraining from—

(i) interfering with, restraining, or coercing employees in the exercise of their rights of self-organization under this paragraph,

(ii) dominating or interfering with the formation or administration of any labor organization, or sponsoring, controlling, or contributing financial or other assistance to it,

(iii) encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other condition of employment,

(iv) discharging or otherwise disciplining or discriminating against any employee who has exercised any rights of self-organization under this paragraph, and

(v) refusing to bargain collectively with any organization freely chosen by employees under this paragraph;

(C) allowing employees to exercise rights of self-organization, including solicitation of fellow employees during nonworking hours, allowing distribution and posting of union literature by employees during nonworking hours in nonworking areas, and allowing reasonable access to labor organization representatives to communicate with employees on employer premises at reasonable times;

(D) allowing employee representatives to meet with employer representatives during working hours without loss of pay for purposes of collective bargaining, negotiation of agreements, and representation of employee grievances;

(E) regularly informing employees that it is company policy to consult and bargain collectively with organizations which are freely elected by the employees to represent them; and

(F) utilizing impartial persons mutually agreed upon by employer and employee representatives to resolve disputes concerning election of representatives, negotiation of agreements or grievances arising thereunder, or any other matters arising under this paragraph.

(b) The Secretary may issue guidelines and criteria to assist persons who are or may be subject to this subtitle in complying with the principles set forth in subsection (a) of this section. The Secretary may, upon request, give an advisory opinion to any person who is or may be subject to this subtitle as to whether that person is subject to this subtitle or would be considered to be in compliance with the principles set forth in subsection (a).

#### ADVISORY COUNCILS

SEC. 313. (a) The Secretary shall establish in South Africa an Advisory Council (1) to advise the Secretary with respect to the implementation of those principles set forth in section 312(a), and (2) to review periodically the reports submitted pursuant to section 314(a) and, where necessary, to supplement the information contained in such reports. The Advisory Council shall be composed of ten members appointed by the Secretary from among persons representing trade unions committed to nondiscriminatory policies, the United States Chamber of Commerce in South Africa, and the South African academic community, and from among South African community and church leaders who have demonstrated a concern for equal rights. In addition to the ten appointed members of the Advisory Council, the United States Ambassador to South Africa shall be a member of the Advisory Council, ex officio.

(b) The Secretary shall establish in the United States an American Advisory Council to make policy recommendations with respect to the labor practices of United States persons in South Africa and to review periodically the progress of such persons in carrying out the provisions of section 311 of this Act. The American Advisory Council shall be composed of 11 members appointed by the Secretary from among qualified persons, including officers and employees of the Department of State, the Department of Commerce, the Department of Labor, and the Equal Employment Opportunity Commission, and representatives of labor, business, civil rights, and religious organizations. The Secretary shall publish in the Federal Register any recommendations made by the American Advisory Council under this subsection.

(c) Members of the Advisory Council in South Africa and of the American Advisory Council shall be appointed for 3-year terms, except that of the members first appointed, three on each Council shall be appointed for terms of two years, and three on each Council shall be appointed for terms of one year, as designated at the time of their appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(d) The United States Ambassador to South Africa shall provide to the Advisory Council in South Africa the necessary clerical and administrative assistance. The Secretary shall provide such assistance to the American Advisory Council.

(e) Members of the Advisory Council in South Africa and of the American Advisory Council shall serve without pay, except that, while away from their homes or regular places of business in the performance of services for the respective Councils, members of the Advisory Councils shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

#### ENFORCEMENT; SANCTIONS

SEC. 314 (a) Each United States person referred to in section 311 of this Act shall submit to the Secretary (1) a detailed and fully documented annual report on the progress of that person in complying with the provisions of this subtitle, and (2) such other information as the Secretary determines is necessary.

(b) In order to insure compliance with this subtitle and any regulations issued to carry out this subtitle, the Secretary—

(1) shall establish mechanisms to monitor such compliance, including on-site monitoring with respect to each United States person referred to in section 311 of this Act at least once in every 2-year period;

(2) shall make reasonable efforts within a reasonable period of time to secure such compliance by means of conference, conciliation, mediation, and persuasion;

(3) shall, in any case in which the Secretary has reason to believe that any person has furnished the Secretary with false information relating to the provisions of this subtitle, recommend to the Attorney General that criminal proceedings be brought against such person; and

(4) may conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and production of all books, papers, and documents relating to any matter under investigation.

(c) The Secretary shall, within 90 days after giving notice and an opportunity for a hearing to each United States person referred to in section 311 of this Act, make a determination with respect to the compliance of that United States person with the provisions of this subtitle and any regulations issued to carry out this subtitle.

(d)(1) Any United States person with respect to whom the Secretary makes a determination under subsection (c) or (f) of this section either that the person is not in compliance with this subtitle or any regulations issued to carry out this subtitle, or that the compliance of the person with this subtitle or those regulations cannot be established on account of a failure to provide information to the Secretary or on account of the provision of false information to the Secretary, may not—

(A) export any goods or technology directly or indirectly to South Africa; or

(B) use the services of the Export-Import Bank of the United States.

(2)(A) In addition to the penalties set forth in paragraph (1), the Secretary may impose upon any United States person subject to those penalties—

(i) if other than an individual, a fine of not more than \$1,000,000, or

(ii) if an individual, a fine of not more than \$50,000.

(B)(i) Any officer, director, or employee of a United States person subject to the penalties set forth in subparagraph (A), or any individual in control of that United States person, who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation involved and (ii) any agent of such United States person who knowingly and willfully carried out such act or practice, shall be subject to a fine, imposed by the Secretary, of not more than \$10,000.

(C) A fine imposed under subparagraph (B) may not be paid, directly or indirectly, by the United States person committing the violation involved.

(D) The payment of any fine imposed under this paragraph shall be deposited in the miscellaneous receipts of the Treasury. In the event of the failure of any person to pay a fine imposed under this paragraph, the fine may be recovered in a civil action in the name of the United States brought by the Secretary in an appropriate United States district court.

(3) Any United States person who violates the provisions of paragraph (1)(A) of this subsection shall, in addition to any other penalty specified in this subtitle, be fined, for each such violation, not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than five years, or both. For purposes of paragraph (1)(A) of this subsection, "goods" and "technology" have the same meanings as are given those terms in paragraphs (3) and (4) of section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415).

(e) The Secretary shall issue an order carrying out any penalty imposed under paragraph (1) or (2) of subsection (d).

(f)(1) The Secretary shall, at least once in every 2-year period, review and, in accordance with subsection (c), make a redetermination with respect to the compliance of each United States person referred to in section 311 of this Act with the provisions of this subtitle and any regulations issued to carry out this subtitle.

(2) In the case of any United States person with respect to whom the Secretary makes a determination under subsection (c) or paragraph (1) of this subsection either that the person is not in compliance with this subtitle or any regulations issued to carry out this subtitle, or that the compliance of the person with this subtitle or those regulations cannot be established on account of a failure to provide information to the Secretary or on account of the provision of false information to the Secretary, the Secretary shall, upon the request of that person and after giving that person an opportunity for a hearing, review and redetermine that person's compliance within 60 days after that person files the first annual report pursuant to subsection (a) of this section after the negative determination is made.

(g) Any United States person aggrieved by a determination of the Secretary under subsection (c) or (f) of this section may seek judicial review of that determination in accordance with the provisions of chapter 7 of title 5, United States Code.

(h) The Secretary shall submit an annual report to the Congress on the compliance of those United States persons referred to in section 311 of this Act with the provisions of this subtitle.

## REGULATIONS

SEC. 315. (a) The Secretary shall, after consulting with the Advisory Councils established pursuant to section 313 of this Act, issue such regulations as are necessary to carry out this subtitle. Such regulations shall be issued not later than 180 days after the date of the enactment of this Act. The Secretary shall establish dates by which United States persons must comply with the different provisions of this subtitle, except that the date for compliance with all the provisions of this subtitle shall not be later than one year after the date of the enactment of this Act.

(b) Before issuing final regulations pursuant to subsection (a), the Secretary shall publish in the Federal Register the regulations proposed to be issued and shall give interested persons at least 30 days to submit comments on the proposed regulations. The Secretary shall, in issuing the final regulations, take into account the comments so submitted.

## WAIVER OR TERMINATION OF PROVISIONS

SEC. 316. (a) In any case in which the President determines that compliance by a United States person with the provisions of this subtitle would harm the national security of the United States, the President may waive those provisions with respect to that United States person if the President publishes each waiver in the Federal Register and submits each waiver and the justification for the waiver to the Congress and if the Congress enacts a joint resolution approving the waiver.

(b) Upon a written determination by the President that the Government of South Africa has terminated its practice of systematic racial discrimination and allows all the people of South Africa, regardless of race or ethnic origin, to participate fully in the social, political, and economic life in that country, the provisions of this subtitle and any regulations issued to carry out this subtitle shall cease to be effective.

## Subtitle 2—Prohibition on Loans and Importation of Gold Coins

## LOANS TO SOUTH AFRICA

SEC. 321. (a) No bank operating under the laws of the United States may make any loan directly or through a foreign subsidiary to the South African Government or to any corporation, partnership, or other organization which is owned or controlled by the South African Government, as determined under regulations issued by the Secretary. The prohibition contained in this subsection shall not apply to loans for educational, housing, or health facilities which are available to all persons on a totally nondiscriminatory basis and which are located in geographic areas accessible to all population groups without any legal or administrative restriction.

(b) The prohibition contained in subsection (a) of this section shall not apply to any loan or extension of credit for which an agreement is entered into before the date of the enactment of this Act.

## GOLD COINS

SEC. 322. No person, including any bank operating under the laws of the United States, may import into the United States any South African kruggerand and or any other gold coin minted in South Africa or offered for sale by the South African Government.

## ENFORCEMENT; PENALTIES

SEC. 323 (a) The Secretary, in consultation with the Secretary of the Treasury and the Secretary of Commerce, shall take the necessary steps to insure compliance with the provisions of this subtitle, including—

- (1) issuing such regulations as the Secretary considers necessary to carry out this subtitle;
- (2) establishing mechanisms to monitor compliance with the provisions of this subtitle and any regulations issued pursuant to paragraph (1) of this subsection;
- (3) in any case in which the Secretary has reason to believe that a violation of this subtitle has occurred or is about to occur, referring the matter to the Attorney General for appropriate action; and
- (4) in any case in which the Secretary has reason to believe that any person has furnished the Secretary with false information relating to the provisions of this subtitle, referring the matter to the Attorney General for appropriate action.

(b)(1) Any person, other than an individual, that violates section 321 or 322 of this Act shall be fined not more than \$1,000,000.

(2) Any individual who violates section 321 of this Act shall be fined not more than \$50,000, or imprisoned not more than five years, or both.

(3) Any individual who violates section 322 of this Act shall be fined not more than five times the value of the krugerrands or gold coins involved.

(c)(1) Whenever a person violates section 321 or 322 of this Act—

(A) any officer, director, or employee of such person, or any natural person in control of such person, who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice, shall, upon conviction, be fined not more than \$10,000, or imprisoned not more than five years, or both.

(2) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

#### WAIVER BY PRESIDENT

SEC. 324. The President may waive the prohibitions contained in sections 321 and 322 of this Act for periods of not more than one year each if the President determines that the Government of South Africa has made substantial progress toward the full participation of all the people of South Africa in the social, political, and economic life in that country and toward an end to discrimination based on race or ethnic origin, if the President submits any such determination, and the basis for the determination, to the Congress, and if the Congress enacts a joint resolution approving the determination.

#### Subtitle 3—General Provisions

##### COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

SEC. 331. (a) Each department and agency of the United States shall cooperate with the Secretary in carrying out the provisions of this title, including, upon the request of the Secretary, taking steps to insure compliance with the provisions of this title and any regulations issued to carry out this title.

(b) The Secretary may secure directly from any department or agency of the United States information necessary to enable the Secretary to carry out the Secretary's functions under this title.

##### DEFINITIONS

SEC. 332. For purposes of this title—

(1) the term "United States person" means any United States resident or national and any domestic concern (including any permanent domestic establishment of any foreign concern);

(2) the term "Secretary" means the Secretary of State;

(3) the term "South Africa" includes the Republic of South Africa; any territory under the administration, legal or illegal, of South Africa; and the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, and Venda; and

(4) a United States person shall be presumed to control a corporation, partnership, or other enterprise in South Africa if—

(A) the United States person beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the corporation, partnership, or enterprise;

(B) the United States person beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the corporation, partnership, or enterprise, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(C) the corporation, partnership, or enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(D) a majority of the members of the board of directors of the corporation, partnership, or enterprise are also members of the comparable governing body of the United States person;

(E) the United States person has authority to appoint a majority of the members of the board of directors of the corporation, partnership, or enterprise; or

(F) the United States person has authority to appoint the chief operating officer of the corporation, partnership, or enterprise.

**APPLICABILITY TO EVASIONS OF TITLE**

SEC. 333. (a) Subtitle 1 of this title shall apply to any United States person who undertakes or causes to be undertaken any transaction or activity with the intent to evade the provisions of subtitle 1 of this title or any regulations issued to carry out that subtitle.

(b) Subtitle 2 of this title shall apply to any bank operating under the laws of the United States, or to any other person, who or which undertakes or causes to be undertaken any transaction or activity with the intent to evade the provisions of subtitle 2 of this title or any regulations issued to carry out that subtitle.

**CONSTRUCTION OF TITLE; SEVERABILITY**

SEC. 334. (a) Nothing in this title shall be construed as constituting any recognition by the United States of the homelands referred to in section 332(3) of this Act.

(b) If any provision of this title or the application of this title to any person or circumstance is held invalid, neither the remainder of this title nor the application of that provision to other persons or circumstances shall be affected thereby.

